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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/631,000	08/02/2000	Michael L. Blomquist	9015.135US01	8019
23552 7590 08/01/2007 MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			EXAMINER KOPPIKAR, VIVEK D	
			ART UNIT 3626	PAPER NUMBER
			MAIL DATE 08/01/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/631,000	BLOMQUIST, MICHAEL L.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Vivek D. Koppikar	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 May 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Status of the Application***

1. Claims 1-3 have been examined in this application. This communication is in response to the "Amendment" and "Remarks" filed on May 16, 2007.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claim 20 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. A propagated signal on a carrier medium is not a category of statutorily recognized subject matter.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 20 is indefinite because it is directed to a propagated signal on a carrier detectable by a computing system and encoding a set of program data for controlling operation of a medical pump, the propagated signal being encoded according to the method of claim 16. However, Claim 16 is not directed towards a step of encoding a signal.

### ***Claim Rejections - 35 USC § 103***

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6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-3, 6-20 and 26-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Number 5,788,669 to Peterson in view of US Patent Number 5,713,856 to Eggers in view of Official Notice.

(A) As per claim 1, Peterson discloses a method for creating a library of pump data on a computer having a database, the pump data being organized into sets of program data, each set of program data being available for batch downloading to a medical pump and including data items for controlling operation of the medical pump, the method comprising:  
the plurality of data items forming a set of program data, (col. 4, lines 10-18 and lines 36-53).

Peterson teaches patient-specific parameters (Col. 1, Ln. 20-21). In Peterson the memory is within the pump (Figure 1 and Col. 3, Ln. 50-65).

Peterson does not explicitly disclose at least some of the data items establishing parameters for controlling operation of a medical PUDP entering a plurality of data items into a database on the computer.

However, Eggers discloses at least some of the data items establishing parameters for controlling operation of a medical pump (i.e. drug libraries customized for each user ...) (col. 10, line 62 - col. 11, line 45) entering a plurality of data items into a database on the computer, and assigning at least one data key to the set of program data, the data key identifying the set of

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program data (i.e. drug libraries customized for each user ...)(col. 10, line 62 - col. 11, line 45).

Eggers also teaches the following: batch-downloading the plurality of data items into the memory within the pump and controlling operation of the pump based on one or more data items (Eggers: Col. 10, Ln. 62-Col. 11, Ln. 7). (Note: The Examiner takes the position that the step of downloading the library of data wherein each drug library can be customized for each user is equivalent to batch-downloading data for a specific patient. In other words, a user in Eggers can be a patient). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include at least some of the data items establishing parameters for controlling operation of a medical pump, entering a plurality of data items into a database on the computer as disclosed by Eggers within the Peterson system for the motivation of downloading complicated drug delivery profiles to the system (col. 2, lines 3-10 and col. 11, lines 14-20).

Peterson and Eggers do not explicitly disclose assigning at least one data key to the set of program data, the data key identifying the set of program data.

However, the Examiner takes official notice that it was well known in the database arts to assign identifiers to data sets. The purpose of using identifiers was to locate the particular data that is to be utilized by a user or program. It would have been obvious to one of ordinary skill in the art at the time of Applicants invention to include assigning at least one data key to the set of program data, the data key identifying the set of program data within Peterson and Eggers for the motivation stated above.

(B) As to claim 2, Peterson does not explicitly disclose the method of claim 1 wherein the acts of:

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entering a plurality of data items into a database includes entering the plurality of data items into a program data record in the database.

However, Eggers discloses entering a plurality of data items into a database includes entering the plurality of data items into a program data record in the database (i.e. drug library (Col. 2, Ln. 3-10 and Col. 11, Ln. 14-26). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include entering a plurality of data items into a database includes entering the plurality of data items into a program data record in the database as disclosed by Eggers within the Peterson system for the motivation of downloading complicated drug delivery profiles to the system (col. 2, lines 3-10 and col. 11, lines 14-2). Peterson and Eggers do not explicitly disclose assigning at least one data key to the set of program data includes entering the data key into a data key record and linking the data key record to the program data record.

However, the Examiner takes official notice that it was well known in the database arts to assign identifiers to data sets and linking data key records to application programs.. The purpose of using identifiers was to locate the particular data that is to be utilized by a user or program. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to include assigning at least one data key to the set of program data includes entering the data key into a data key record and linking the data key record to the program data record within Peterson and Eggers for the motivation stated above.

(C) As to claim 3, Peterson does not explicitly disclose the method of claim 2 wherein further including entering an identification code selected from the group consisting essentially of a patient I.D., a therapy I.D., and a fluid I.D., wherein the patient I.D. is a code identifying a

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patient, the therapy I.D. is a code identifying a therapy administered using a medical pump, and the fluid I.D. is a code identifying a fluid that is administered using a medical pump.

However, Eggers discloses further including entering an identification code selected from the group consisting essentially of a patient I.D., a therapy I.D., and a fluid I.D., wherein the patient I.D. is a code identifying a patient, the therapy I.D. is a code identifying a therapy administered using a medical pump, and the fluid I.D. is a code identifying a fluid that is administered using a medical pump (col. 10, line 62 - col. 11, line 7). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include entering an identification code selected from the group consisting essentially of a patient I.D., a therapy I.D., and a fluid I.D., wherein the patient I.D. is a code identifying a patient, the therapy I.D. is a code identifying a therapy administered using a medical pump, and the fluid I.D. is a code identifying a fluid that is administered using a medical pump as disclosed by Eggers within the Peterson system for the motivation of downloading complicated drug delivery profiles to the system (col. 2, lines 3-10 and col. 11, lines 14-20).

(D) As to claim 6, Peterson in view of Eggers disclose a computer storage medium contain a library of pump data, the computer storage medium be created by the method set forth in claim 1.

(E) Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson in view Eggers in view of Official Notice as applied to claim 3 above, and further in view of "Acute Health Solutions' DoseWatch to use Multum's MediSource 'hereinafter MediSource) and Eggers as applied to claim 3 above, and further in view of "Acute Health Solutions'" DoseWatch to use Multum's MediSource (hereinafter Medisource).

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As to claim 4, Peterson does not explicitly disclose the method of claim 3 wherein the computer is in data communication with a scanner, the method further comprising.

scanning a bar code with the scanner; and

entering the bar code into the computer, wherein the act of assigning at least one data key to the

set of program data includes assigning the bar code to the set of program data.

However, MediSource discloses wherein the computer is in data communication with a scanner, the method further comprising.

scanning a bar code with the scanner; and entering the bar code into the computer, wherein the act of assigning at least one data key to the set of program data includes assigning the bar code to the set of program data (see abstract and page 2, paragraph 3). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include wherein the computer is in data communication with a scanner, the method further comprising: scanning a bar code with the scanner; and entering the bar code into the computer, wherein the act of assigning at least one data key to the set of program data includes assigning the bar code to the set of program data as disclosed by MediSource with the combined system of Peterson, Eggers and Official Notice for the motivation to insure association of the drug and concentration with a pump rate and an infusion amount (Abstract).

As to claim 5, Peterson does not explicitly disclose the method of claim 3 wherein the computer is in data communication with a medical pump, the method further comprising uploading a set of program data items from the pump.



However, MediSource discloses wherein the computer is in data communication with a medical pump, the method further comprising uploading a set of program data items from the pump (Abstract and Page 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to include a computer which is in data communication with a medical pump, the method further comprising uploading a set of program data items from the pump as disclosed by MediSource within the Peterson system for the motivation of insuring association of the drug and concentration with a pump rate and an infusion amount (Abstract).

(F) As per claims 7-20 and 23-24, these claims are substantially similar to claims 1-6 and are rejected on the same basis.

(G) Claims 26-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson in view of Eggers.

As per claim 26, Peterson teaches a pump for infusing fluid into a patient (Peterson: Figure 1 and Col. 3, Ln. 50-65), the pump comprising:

- a housing (Figure 1 and Col. 3, Ln. 50-65);
- a pump mechanism positioned within the housing (Figure 1 and Col. 3, Ln. 50-65);
- memory positioned within the housing and configured to store a plurality of data items forming a set of program data, at least some of the data items establishing patient-specific parameters for controlling operation of a medical pump (Figure 1; Col. 1, Ln. 1-21 and Col. 3, Ln. 50-65)
- and multiple program modules (Col. 3, Ln. 56-65 and Col. 4, Ln. 54-57).

Peterson does not explicitly disclose at least some of the data items establishing parameters for controlling operation of a medical PUDP entering a plurality of data items into a database on the computer.

However, Eggers discloses at least some of the data items establishing parameters for controlling operation of a medical pump (i.e. drug libraries customized for each user ...) (col. 10, line 62 - col. 11, line 45) entering a plurality of data items into a database on the computer, and assigning at least one data key to the set of program data, the data key identifying the set of program data (i.e. drug libraries customized for each user ...)(col. 10, line 62 - col. 11, line 45). Eggers also teaches the following: batch-downloading the plurality of data items into the memory within the pump and controlling operation of the pump based on one or more data items (Eggers: Col. 10, Ln. 62-Col. 11, Ln. 7). (Note: The Examiner takes the position that the step of downloading the library of data wherein each drug library can be customized for each user is equivalent to batch-downloading data for a specific patient. In other words, a user in Eggers can be a patient). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include at least some of the data items establishing parameters for controlling operation of a medical pump, entering a plurality of data items into a database on the computer as disclosed by Eggers within the Peterson system for the motivation of downloading complicated drug delivery profiles to the system (col. 2, lines 3-10 and col. 11, lines 14-20). Peterson and Eggers do not explicitly disclose assigning at least one data key to the set of program data, the data key identifying the set of program data.

(H) As per claim 27, in Peterson the program data includes the delivery rate for the patient (Peterson: Col. 4, Ln. 47-53).

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(I) As per claim 28, in Peterson the program data identifies a therapy name (Peterson: Col. 4, Ln. 47-53).

(J) As per claims 29-31, are these claims are substantially similar to claims 1-20, 23-24 and 26-28, above, are rejected on the same basis.

(K) As per claim 32, the combined teachings of Peterson in view of Eggers teaches that the plurality of data items includes at least one data item selected from the group consisting of data items related to delivery schedules, medication doses, and boluses (Eggers: Col. 10, Ln. 62-66). The motivation for making this modification to Peterson is the same as that set forth above, in the rejection of Claim 26.

#### ***Response to Arguments***

8. Applicant's arguments filed May 16, 2007 have been fully considered but they are not persuasive.

Applicants argue that the Ertel reference does not teach the step of batch-downloading the plurality of data items into the memory within the pump; and controlling operating of the pump based on one or more of the data items. However, the rejection has been modified because the Eggers reference teaches this feature.

#### ***Examiner's Suggestions***

9. The Examiner recommends amending the claims to clarify if the batch-downloading of the data items into the memory of the pump is patient-specific data.

#### ***Conclusion***


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10. Any inquire concerning this communication or earlier communications from the examiner should be directed to Vivek Koppikar, whose telephone number is (571) 272-5109. The examiner can normally be reached from Monday to Friday between 8 AM and 4:30 PM.

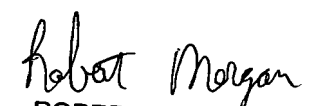
If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached at (571) 272-6776. The fax telephone numbers for this group are either (571) 273-8300 or (703) 872-9326 (for official communications including After Final communications labeled "Box AF").

Another resource that is available to applicants is the Patent Application Information Retrieval (PAIR). Information regarding the status of an application can be obtained from the (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAX. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, please feel free to contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sincerely,

  
Vivek Koppikar

7/11/2007

  
ROBERT W. MORGAN  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 3600